

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CESAR ESCALANTE
Claimant

VS.

IBP, INC.
Respondent
Self-Insured

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Docket No. 192,387

ORDER

Respondent appeals an Order entered by Administrative Law Judge Floyd V. Palmer on June 21, 1995. Appeals Board Member Pro Tem Ernest L. Johnson will serve in place of Appeals Board Member Gary M. Korte who has recused himself from this proceeding.

ISSUES

Respondent contends that the Administrative Law Judge exceeded his authority when he assessed the costs of an independent medical examination against the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Following a pre-hearing settlement conference, Administrative Law Judge Floyd V. Palmer appointed Dr. Peter V. Bieri as an independent health care provider pursuant to K.S.A. 44-510e(a) to perform the evaluation of the claimant for functional impairment and, if appropriate, restrictions. The Administrative Law Judge ordered respondent to pay the costs of the medical examination and report. Respondent asserts that the Administrative Law Judge exceeded his authority when he assessed the costs of the examination and report against the respondent.

The initial issue that the Appeals Board will address in this case is whether the Appeals Board has jurisdiction to review the Order entered by Administrative Law Judge Floyd V. Palmer dated June 21, 1995. After reviewing the arguments contained in the Application for Review filed by the respondent and the written response of the claimant, the Appeals Board finds and concludes that it does not have jurisdiction to review this particular Order.

The decision of the Administrative Law judge to have an independent medical examination performed on the claimant and to assess the costs of such examination to the respondent is interlocutory in nature and made during the litigation of a workers

compensation case before the Administrative Law Judge. This is not a final order that can be reviewed pursuant to K.S.A. 44-551, as amended by S.B. 59 (1995). Neither is this an order entered pursuant to the preliminary hearing statute, K.S.A. 44-534a, as preliminary hearing orders are limited to the issues of furnishing medical treatment and payment of temporary total disability compensation. The issue now before the Appeals Board pertains to an interlocutory matter, the ordering of an independent medical examination, an issue over which an Administrative Law Judge has authority during the litigation of a workers compensation case.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Application for Review filed by the respondent is dismissed as the Appeals Board lacks jurisdiction to review the Order of Administrative Law Judge Floyd V. Palmer ordering an independent medical examination and assessing costs of the same to the respondent.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, Kansas
John David Jurcyk, Lenexa, Kansas
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director